

Message Text

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ACTION EB-07

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FM AMEMBASSY TAIPEI

TO SECSTATE WASHDC 9049

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E.O. 11652: N/A

TAGS: EINV, ETRA, TW

SUBJECT: PATENTS ON AGRICULTURAL CHEMICALS - VISIT OF MONSANTO
ATTORNEY DON PETERSON

REF: A) STATE 077801, B) STATE 069476, C) STATE 062639

1. EMBASSY HAS BEEN INFORMED BY BUREAU OF NATIONAL STANDARDS,
MINISTRY OF ECONOMIC AFFAIRS, THAT MINISTRY DOES PLAN TO
PUBLISH SOON A DIRECTIVE STATING THAT AS OF MAY 1, 1976 A CHEMICAL
COMPOSITION -- WHETHER EXPRESSED AS A COMPOSITION OR USE CLAIM --
WILL NOT BE REGARDED AS A NEW INVENTION AND THUS WILL NOT BE
GRANTED PATEN COVERAGE IN THE ROC.

2. HISTOL:-))6, CHEMICAL COMPOSITIONS HAVE BEE MGRWVYAD PATENT
COVERAGE IF OTHER REQUIREMENTS OF THE PATENT LAW HAVE BEEN MET.
APPROXIMATELY A YEAR AGO, THE DIRECTOR OF THE BUREAU OF NATIONAL
STANDARDS, DR. WERNER NING (NING YU-FENG), RECOMMENDED TO
MINISTER Y.S. SUN (SUN YUN-HSUAN) THAT HE PRECLUDE THE PATENTABILITY
OF CHEMICAL COMPOSITIONS, INCLUDING PESTICIDES AND THEIR USES.
THE MINISTER SAT ON NING'S RECOMMENDATION UNTIL EARLY MARCH 1976,
WHEN HE AGREED TO PUBLISH A DIRECTIVE STATING THAT CHEMICAL
COMPOSITION CLAIMS AND SPECIFIC USE CLAIMS WILL NOT BE GIVEN
PATENT PROTECTION. ONLY PROCESS PATENTS WILL STILL BE ALLOWED.

3. MONSANTO PATENT COUNSEL DONALD W. PETERSON AND C.L. SIMPSON
OF MANSANTO JAPAN LTD. WERE IN TAIPEI WEEK OF MARCH 28. THEY
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PARTICIPATED IN STRATEGY SESSIONS WITH ECONCOUN, WITH LOCAL

MANAGERS AND COUNSELS
OF OTHER COMPANIES
WHICH WOULD BE AFFECTED
BY CHANGES IN INTERPRETATION OF PATENT LAW AND WITH TAIPEI
AMCHAM. PETERSON ALSO CALLED ON DIRECTOR OF PATENT OFFICE IN
BUREAU OF NATIONAL STANDARDS.

4. AT EMBASSY'S SUGGESTION, IT HAS BEEN AGREED BY ALL PARTIES
CONCERNED THAT TACTICS WHICH WERE USED IN CONVINCING MINISTER
SUN NOT TO ALLOW CANCELLATION OF PATENTS FOR NON-WORKING WILL
BE EMPLOYED AGAIN. ON APRIL 6, ECONOMIC AFFAIRS COMMITTEE OF
AMCHAM WILL RAISE PATENT ISSUE WITH MINISTER SUN AT SCHEDULED
MONTHLY MEETING BETWEEN COMMITTEE AND MINISTRY OFFICIALS. ON
APRIL 7, EMBASSY AND AMCHAM WILL SEND LETTERS TO MINISTER AND
ASSOCIATION OF PATENT ATTORNEYS IN THE ROC WILL SUBMIT PETITION.
ALL THREE DOCUMENTS WILL OPPOSE IMPLEMENTATION OF DIRECTIVE,
ALTHOUGH ARGUMENTS WILL VARY SOMEWHAT. AMCHAM WILL STRESS THAT
WITHOUT PATENT COVERAGE THERE WILL BE NO INCENTIVE FOR COMPANIES
TO INVEST IN SYNTHESIZING, DEVELOPING AND INTRODUCING AGRICULTURAL
CHEMICALS IN THE ROC. EMBASSY WILL POINT OUT THAT DIRECTIVE WILL
RESTRICT INFLOW OF TECHNOLOGY, RETARD DEVELOPMENT OF AGRICULTURE,
AND ELIMINATE INCENTIVES FOR LOCAL INDUSTRY TO INVEST IN CHEMICAL
RESEARCH AND DEVELOPMENT. PATENT ATTORNEYS WILL FOCUS ON
PRACTICES ADOPTED BY OTHER COUNTRIES IN GRANTING PATENTS ON
CHEMICAL COMPOSITIONS.

5. ALL THREE DOCUMENTS WILL URGE MINISTER NOT TO IMPLEMENT
DIRECTIVE UNTIL HE HAS CONSIDERED ALL POSSIBLE RAMIFICATIONS OF
HIS ACTION. HE WILL BE INFORMED BY EMBASSY THAT IT IS WILLING
TO RECOMMEND THAT QUALIFIED USG PATENT EXPERT COME TO TAIWAN
TO DISCUSS THE MATTER WITH HIM AND DR. NING.

6. LATTER POINT WAS MADE AT PETERSON'S REQUEST BEFORE HE
DEPARTED TAIWAN ON APRIL 3. ECONCOUN SUBSEQUENTLY RECEIVED
TELEGRAM FROM PETERSON IN TOKYO REQUESTING ON BEHALF OF MONSANTO
THAT EMBASSY URGE DEPARTMENT TO SEND PATENT EXPERT, PREFERABLY
KIRK, TO TAIWAN. MONSANTO ALSO WILL BE SENDING SIMILAR TELEGRAM
TO DEPARTMENT.

7. ASSUMING MINISTER AGREES TO RECEIVE EXPERT, EMBASSY IS OF
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THE OPINION HIS PRESENCE HERE WOULD BE HIGHLY USEFUL. NEITHER
EMBASSY, US COMPANIES, NOR AMCHAM UNDERSTAND FULLY THE
COMPLEX PATENT ISSUES INVOLVED AND, ACCORDING TO PETERSON, NEITHER
DOES DR. NING AND HIS STAFF. UNGER

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